IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/07/2004

CORAM

THE HONOURABLE Mr.JUSTICE V.KANAGARAJ

C.R.P. (P.D.) No. 190 of 2004

and

C.M.P.No. 2138 of 2004

1.Narasimhan
2.Mahadevan ... Petitioners

-VS-

Jayakumari ... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India praying for the relief as stated below.

!For petitioners ... Mrs.Usha Raman

^For Respondent ... No appearance

:O R D E R
This Civil Revision Petition has been filed by the plaintiffs in the suit in O.S.No. 420 of 1994 as against the fair and decreetal order dated 23-10-2003 made in I.A.No. 1288 of 2003 in the said suit on the file of the Court of Additional District Munsif, Tindivanam.

2. Tracing the history of the above Civil Revision Petition coming to be filed before this Court, it comes to be seen that an application was filed by the respondent herein, who is the 5th defendant in the suit under Section 151 of C.P.C. to reject the proof affidavit filed by the second defendant in the suit, on grounds such as that the first defendant as the Power of Attorney Agent of the second defendant does not have any independent right; that on behalf of the second defendant, the first defendant himself has adduced evidence as P.W.1, which would be considered as that of the evidence of the second defendant and therefore, the second defendant need not necessarily be examined and an application filed to that effect is pending; that moreover, the thumb impression expert has been examined in the case as P.W.3; that as per Order 18 Rule 3 parties must be examined before the witnesses in the case; that since a non-party witness has been examined as P.W.3, thereafter the second defendant cannot be examined as a party and on such grounds, the petitioner has prayed for dismissing the proof affidavit filed by the second defendant.

3.Even though, this application was stiffly opposed by the otherside, the petitioner before the lower Court on ground that questions have been raised against the power of attorney given in favour of P.W.1 in the suit and therefore, it has become necessary on the part of the second defendant to examine himself as a witness and therefore, would pray to dismiss the application filed on the part of the petitioners.

4. The Court below having framed its own point for consideration and having traced the facts and circumstances of the case and the position of law on the subject and having its own discussions on the propositions held by the upper forums cited by parties, would ultimately arrive at the conclusion to allow the said application filed by the respondent herein, without costs, testifying the validity of which, the respondents therein have come forward to file this revision petition on grounds such as that the Court below ought to have seen that the examination of the second plaintiff after the examination of an expert witness was necessitated on account of the objections raised by the defendant previously when his evidence was tendered soon after the examination of the first plaintiff and hence, the defendants were estopped from raising any objection; that the Court below ought to have seen that the provisions of Order 18 Rule 3A C.P.C. are only directory and not mandatory; that the Court below ought to have seen that the refusal to permit P.W.2 to be examined as a witness would greatly prejudice the fair procedure in denying the plaintiffs an opportunity to establish the truth of the contentions that there had been no execution of Power of Attorney by the second plaintiff in favour of the first defendant.

5. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioners, with no representation made on the part of the respondent, on an over all consideration of all the facts and circumstances of the case and the law pertaining to the subject, it is Order 18 Rule Rule 3 C.P.C. which is relevant for consideration just for the simple reason that either it is directory or recommendatory not for discarding the same the said Section has been codified in the Civil Procedure Code and there is no rule to the effect that only if it is mandatory it has to be adopted by the Courts and parties and not otherwise. One thing that could be said at this juncture is that in matters where it is mandatory the Courts have to compulsorily follow the dictum of law and there is no such compulsions in the case of the Section being directory or recommendatory, which does not mean that those provisions of law could be ignored or neglected and therefore, since these provisions of law are serving as guidelines, they have to be adopted and in such event in application of the said provision of law the decision arrived at by the lower Court is the right decision and therefore, the interference of this Court sought to be made into the same is neither necessary nor warranted in the circumstances of the case and hence, the following order.

In result,
i.the above civil revision petition does not merit acceptance, but only becomes liable to be dismissed and the same is dismissed accordingly;
ii.the order dated 23-10-2003 made in I.A.No. 1288 of 2003 in O.S. No. 420 of 1994 by the Court of Additional District Munsif, Tindivanam, is confirmed;

iii.consequently, C.M.P.No. 2138 of 2004 is closed;
iv.there shall be no order as to costs.

Index: Yes
Internet: Yes
paa
To

The Additional District Munsif,
Tindivanam.